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10/643,107	08/18/2003	Mark Hammarth	ITW 0003 PA/13247	3329

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EXAMINER

BARNEY, SETH E

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/643,107

Applicant(s)

HAMMARTH ET AL.

Examiner

Seth Barney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 25, 26, 29 and 30 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 41 is/are allowed.
- 6) ☒ Claim(s) 1-13, 19-24, 27, 28, 31, 35 and 42-45 is/are rejected.
- 7) ☒ Claim(s) 14-18, 32-34, and 36-40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/18/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to the following patentably distinct species of the claimed invention: A) Figures 4-11 B) Figures 12 and 13.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-12, 22, 23, 27, 31-33, and 42-45 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

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case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Patricia Prior on October 7, 2004 a provisional election was made with traverse to prosecute the invention of A) Figures 4-11, claims 1-24, 27, 28, and 31-45. Affirmation of this election must be made by applicant in replying to this Office action. Claims 25, 26, 29 and 30 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 10-13, 19-22, 24, 25, 27, 28, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,829,681 to Hamel.

Regarding claim 1, Hamel discloses a double dispensing spray gun having:

- a primary product container (not shown, see column 3 line 15).

- a sprayer (10) in fluid communication with the primary product container (see Figure 1),

wherein the sprayer comprises:

- a sprayer tip (16)

- a primary product chamber (11) for holding the primary product to be dispensed through the sprayer tip, wherein the primary product is in fluid communication with the tip and has an outlet (19). See Figure 1.

- a secondary product chamber outlet (29') in selective communication with the sprayer tip.

- a manual control (28) which travels through a range (70), the range including a first position and second position. See Figure 1.

- a valve assembly (see Figure 1), wherein the manual control is in the first position the primary product chamber outlet is closed, and when the manual control is in the second position the primary outlet is open. See column 4 lines 43 to 53.

Regarding claims 2 and 19, Hamel discloses the manual control is a trigger (see Figure 1), wherein the first trigger position is biased to rest position, and wherein the second trigger position is fully depressed. See column 4 lines 43 to 61.

Regarding claim 3, Hamel discloses a sprayer device containing a trigger guard (no labeled, see Figure 1).

Regarding claims 4 and 20, Hamel discloses a sprayer device having a handle (13) towards which the trigger moves (70).

Regarding claim 10, Hamel discloses a spray gun having a secondary product chamber (12) that is in fluid communication with a secondary product outlet (29'). See Figure 1.

Regarding claim 11, Hamel discloses a spray gun having a valve (36) to control the secondary product outlet. See Figure 1 and column 3 lines 18 to 48.

Regarding claim 12, Hamel discloses the spray gun having a handle (13). See Figure 1.

Regarding claim 13, Hamel discloses the spray gun having a secondary product chamber (12) for holding the secondary product to be dispensed through the sprayer tip, wherein the secondary product chamber is in selective communication with the sprayer tip, and the secondary product chamber has an inlet (not labeled, see Figure 1) and outlet (29').

Regarding claim 21, the secondary fluid (12) is stored in a cavity in the handle (13). See Figure 1

Regarding method claims 22, 24, 27, 28, and 35, when using the apparatus of Hamel all of the method steps are performed as set forth in the claims.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 7, 8, 42, 43, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,829,681 to Hamel as applied to claim 1 above, and further in view of U.S. Patent No. 5,526,957 to Brown.

Hamel does not disclose a relatively rigid canister, a collapsible bag, a propellant, or a valve connected to the canister. Brown discloses a multi-component dispensing device having a collapsible bag (104) placed in a relatively rigid canister (94), propellant in space (100), a valve in the gun (34) connected to the canister via the composite hose (32), a propellant port (142), a pressure relief port (40), and the working pressure range of the device between 40 and 80 PSI. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spray gun of Hamel with the canister of Brown in order to supply the spray gun with a self pressurized system.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,829,681 to Hamel and U.S. Patent No. 5,526,957 to Brown as applied to claims 1 and 5 above, and further in view of U.S. Patent No. 3,240,399 to Frandeen.

Hamel as modified by Brown does not disclose a perforated tube sealed in the collapsible bag. Frandeen discloses a dispensing receptacle (Figures 1-3), having a perforated tube (40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the device of Hamel and Brown with the perforations as taught by Frandeen to maintain material flow through the tube as the bag is emptied and collapses into the tube.

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9. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,829,681 to Hamel and U.S. Patent No. 5,526,957 to Brown as applied to claim 42 above, and further in view of U.S. Patent No. 6,488,991 to Hunter.

Hamel as modified by Brown does not disclose the use of a quick connector. Hunter shows a dispenser using a quick connector to remove and replace disposable parts of the dispensing, see column 3 lines 62-67 and column 4 lines 1-3. It would have been obvious to one having ordinary skill in the art at the time the invention was to modify the device of Hamel modified by Brown with the quick connectors of Hunter in order to facilitate the removal and installation of disposable parts to reduce cleaning and maintenance time of the device.

10. Claim 9, 23, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,829,681 to Hamel as applied to claim 1,22, and 27 above, and further in view of U.S. 4,227,650 to McKinney.

Regarding claim 9, Hamel does not disclose the spray gun having a check valve adjacent to the sprayer tip. McKinney discloses a spray gun having a check valve (114) adjacent to the spray tip (Figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spray gun of Hamel with the check valve of McKinney in order to prevent backflow of the primary fluid.

Regarding method claims 23 and 31, when using the apparatus of Hamel as modified by McKinney all of the method steps are performed as set forth in the claims.

***Allowable Subject Matter***



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11. Claims 14-18, 32-34, and 36-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claim 41 is allowed.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Foster discloses a dual fluid spray dispenser. Briggs discloses a spray gun with a trigger, a valve, and a check valve.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (703) 308-2603 until November 21, 2004. Effective November 22, 2004 the number will be (571) 272-4896. The examiner can normally be reached on 7:30am-4:00pm (Mon-Fri).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (703)308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney  
Examiner  
Art Unit 3752

SB



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